

## MEETING MINUTES

### **DMLR PERMIT ENHANCEMENT WORK GROUP & DMLR REGULATORY WORK GROUP**

**August 3, 2006  
Oxbow Center, St. Paul, VA**

Jon Rockett	Gerald D. Collins	Joey O'Quinn	Gary Berlin Slone
Barbara Altizer	Mark S. Wooten	Anthony Sturgill	Chris Perry
Danny K. Mullins	R. J. Porter	John Molinary	Keith Mohn
Amanda Slaughter	Mike Edwards	Daniel Kestner	Greg Baker
Ian Dye	Barry H. Spry	Lynn Haynes	Randy Stanley
Matt Simon	Greg Clark	Gary Egan	Jerry Legg
Matt Cartier	Daniel Dotten	Eric Gates	Harve Mooney
Bob Blackstock	Randy Stanley	Ed Asbury	Butch Lambert
Brian Evans	Jerry Legg	Tom Mackey	Gavin Bledsoe
Les Vincent	Donna Puckett		

**Les Vincent, DMLR** – Les opened the meeting and sign in sheets were passed around. He advised that Annette Poore had planned on attending but had emailed that she was unable to do so.

#### **Les Vincent, DMLR - Permit Enhancement Work Group**

- ❖ Corps of Engineers Related Court Decisions – The recent U.S. Supreme Court decision "Rapanos ET. UX., ET AL. v United States". As a result of this ruling the U.S. Army Corps of Engineers (COE) has stopped making jurisdictional determinations on intermittent and ephemeral streams for now. The COE will continue to process any applications for which jurisdictional determinations had previously been made. The COE is currently awaiting guidance from COE Headquarters on how to proceed with jurisdictional determinations. There is no indication at this time when the COE will be able to resume making these determinations.
- ❖ Total Maximum Daily Loads Update
- ❖ Digital Permit Maps and Plans Update
- ❖ Slurry Injection Guidelines
- ❖ National Pollutant Discharge Elimination System Issues

## Joey O'Quinn, DMLR

- ❑ Seven resource extraction Total Maximum Daily Load (TMDL) studies and reports have been completed and approved by the Environmental Protection Agency (EPA) Region III. These TMDLs are for Black Creek, Callahan Creek, and the Guest River in Wise County, Dumps Creek and Lewis Creek in Russell County, Straight Creek in Lee County, and Russell Prater Creek in Buchanan/Dickenson County. The studies are accessible at DEQ's web site.
- ❑ The Virginia Department of Mines, Minerals, and Energy's Division of Mined Land Reclamation (DMLR) has developed guidance for permitting processes impacted by the approved TMDLs. The guidance procedures include screening applications for submittal to EPA, tracking waste load allocations, and adjusting cumulative hydrologic impact assessments. DMLR is taking a phased approach using best management practices instead of numeric limitations to make permits consistent with the TMDLs. Five mining permit applications have already had "TMDL" reviews per the guidance document. Waste Load Allocation evaluation Information on these applications is updated on a DMLR system folder currently accessible in the customer service center at the Buchanan Smith Building.
- ❑ Two more resource extraction TMDL studies have been completed under a single report. These are Pawpaw Creek and Knox Creek in Buchanan County. They have been submitted to EPA and approval is expected soon.
- ❑ One coalfield TMDL study is underway for Garden Creek in Buchanan County via settlement agreement between DMME and Consol. Initial public meetings have not been scheduled. The study and report are planned as part of DEQ's 2008 submittal to EPA. Also Included in the plan for 2008 are TMDL studies for resource extraction impaired segments of the Pound River in Wise County, Bull Creek in Buchanan County, Lick Fork in Russell County, and the North Fork of the Powell River in Lee County.
- ❑ All the TMDL streams mentioned above are listed as impaired because DEQ biological monitoring indicates the streams violate the state's General Standard for benthics. The streams' macroinvertebrate communities are not healthy due to water pollution. Resource extraction (coal mining) is identified as an impairment source and/or a land use in the streams' watersheds. The goal of the TMDL process is to restore the streams biological health and water quality. After that is accomplished and confirmed by DEQ monitoring, the stream is removed from the state's impaired streams list.
- ❑ After TMDLs are approved and adopted, they do become state regulation and will impact DMME programs in several ways. DMLR participates in the implementation plan development processes that follow TMDLs. DMLR facilitates

implementation and watershed restoration through existing programs such as the Abandoned Mined Land (AML) program, the remining initiative, and mitigation requirements.

- ❑ TMDL implementation plan development is required by Virginia's Water Quality Monitoring, Information, and Restoration Act. Implementation plans primarily address non-point source pollution issues not addressed under the state's NPDES program. One coalfield stream TMDL implementation plan has been completed – Guest River. Three other coalfield stream TMDL implementation plans are underway – Knox Creek, Pawpaw Creek, and Dumps Creek.

The DMLR NPDES compliance evaluation program began ten years ago as the product of a water quality workgroup that included coal industry representation. Over the past decade NPDES Compliance Evaluation reports have covered 500 agency issued discharge permits and 13 commercial laboratories.

The idea was for DMLR to expand inspection of discharge permits and permittee's compliance with NPDES conditions by focusing on contract services and laboratories. The ultimate goal is verifying the accuracy of information submitted by permittees and the adequacy of sampling, monitoring, and testing methodologies.

In most instances, the NPDES compliance evaluations have effected positive modifications and provided for very constructive exchanges of information between the agency and permittees.

The typical agenda for a DMLR NPDES compliance evaluation includes the Water Quality Staff meeting with coal company representatives, observing sampling procedures, and inspecting the laboratories' personnel, equipment, & methods. Company records for the previous three years are reviewed; including discharge monitoring reports (DMRs), sampling logs, and bench sheets. Split samples are collected and analytical results from the company's contract laboratory are compared to results from state contract labs. Chemical treatment facilities are usually reviewed by the DMLR representatives and trace metal analyses performed on samples collected. The Division prepares a written report of the findings of the compliance evaluation and a copy of the report is provided to the company. Many of you have probably seen copies of evaluation reports. A comprehensive record of all compliance evaluations is preserved.

To date, the completed compliance evaluations document that Virginia's coal industry is doing a good job of monitoring its industrial discharges. Coal company's self-monitoring of discharges into state waters is the foundation of the NPDES program and, unless the information contained on DMRs is reliable, agency and industry decisions about coal mining and water quality in Virginia's coalfields are compromised. The DMLR NPDES compliance evaluation process is helping to maintain and improve the quality of information gathered during self-monitoring - benefiting the industry, the agency, the public, and the environment.

About the same time DMLR began the compliance evaluation process The Virginia General Assembly passed legislation to establish a program to certify environmental laboratories that “conduct any tests, analyses, measurements, or monitoring required pursuant to” Virginia’s air, waste or water laws. The statute requires that once the program is established, laboratory certification is “required before any tests, analyses, measurements, or monitoring performed by a laboratory may be used for the purposes of” Virginia’s air, waste or water laws. Regulations for the program are in the last stages of development – actually waiting on the Governor’s desk for signature. If the regulations take effect, a program of certification for commercial labs must be in-place through the state’s Division of Consolidated Laboratories Services within 37 months. Some of the things we’ve been doing through the compliance evaluation process would not be necessary or beneficial if the DCLS ever initiates this program.

DMLR would like to have reviewed all permits, companies, labs at least once through the CE process before the DCLS programs is in place. To accomplish this DMLR is planning to group Compliance Evaluations of the remaining permits into a single report. Field work on this review will begin this fall – Staff will be in contact with the specific companies.

As noted, one of the steps in the CE has been metals analyses. EPA Region III has allowed these analyses, performed by DMLR, to suffice for the 2C metal analyses required at specific permit renewals. An addition to the last couple of Compliance Evaluation metals analyses has been cyanide and total phenol analyses. Questions have been raised by EPA Region IV about these two test requirements to Alabama’s coal mine regulatory agency. To be proactive – DMLR has added them to the analyses list.

DMLR has drafted a guidance document on NPDES issues related primarily to water quality evaluation at bond release.

DMLR would like to convene a workgroup to evaluate the draft document. Volunteer will be solicited. Coal industry representatives and stakeholders will be contacted and asked to participate.

The Division of Mined Land Reclamation drafted *Slurry Injection Guidelines* in January 2005 and presented to a slurry injection workgroup in March 2005.

The guidelines addressed the following:

- Site Selection
- Risk Assessment
- Injection System Design
- Spill Prevention and Control
- Approved Chemicals
- Environmental Monitoring
- Operational Contingency
- Mine Void Ownership/Regulation
- GIS Tracking

Workgroup last meeting was August 2005.

There have been some attempts to collect some data on Material Safety Data Sheets since August 2005 but very little progress.

DMLR would like to re-staff and reconvene workgroup. Volunteers will be solicited. Coal industry representatives and stakeholders will be contacted and asked to participate.

### **Harve Mooney, DMLR, Digital Mapping Workgroup Update**

Harve gave the update on digital mapping as Doug Mullins was unable to attend. The digital mapping workgroup was formalized to develop a standard set of mapping conventions in electronic form to enhance electronic permitting. The foremost and most obvious benefit will be expedition of permit application review.

The committee has met twice since the last Permit Enhancement Workgroup meeting. At the initial meeting, the group discussed layer-naming conventions for files and features. Each member of the committee produced examples of their organization's conventions to the group. Doug Mullins presented layer names for the surface layers. Wayne Travis also presented a proposed set of conventions for an underground maps. A brief discussion of digital signatures took place as well. The group agreed that the most succinct method to develop the maps was to have DMLR develop a template for the group to review. Since Doug Mullins was on a national steering committee already attempting the same task, he agreed to prepare a draft template for our review.

At the next meeting, Doug presented to the group a draft template of an electronic application map. The group agreed that the maps would serve well, and Doug agreed to develop templates for all maps for the committee to review. A target date of June 1, 2006 was set to have all the templates completed. Unfortunately, as several committee members were occupied with other matters during the month of May, the group extended the deadline until July to complete the templates. Doug Mullins has noted that he has nearly completed them. In the next two weeks, the committee will meet again and attempt to finalize the draft templates. Then the templates could be presented to the entire Permit Streamline Group for review. It is hoped that by the end of September, 2006 the project will be completed

### **Les Vincent, DMLR and Gavin Bledsoe, DMLR - Regulatory Work Group**

- ❖ Self Bonding Copies of the federal self-bonding rules were passed out to the work group. The Division of Mined Land Reclamation Operational Plan Strategy addressing this requirement was discussed in the Bond Release discussion. Participants were asked to review the material and to provide feedback to DMLR on the self-bonding rules to see if changes are needed.

- ❖ Bond Releases – The Division of Mined Land Reclamation's current Operational Plan includes strategies
  - 1.01.02 - Utilize regulatory work group and Administrative Process Act to address needed regulatory changes, (stream restoration standards, self-bonding - similar to federal standards for cost bond) and;
  - 2.01.03 The DMME Division of Mined Land Reclamation will develop more proactive bonding and bond release procedures through the Permitting Enhancement Work Group.
    - Promote incremental bonding.
    - Develop more proactive bond release.

The work group was asked to consider any recommendations that could promote bond releases and to provide these to DMLR. This could include procedural changes, regulation changes or statute changes.

- ❖ Stream Restoration Standards – A draft regulation change was submitted to the work group for their review. This involved deleting the riprap requirements on the DMLR regulations for diversions and stream restorations. In lieu of mandatory riprap requirements the stream/diversion design would be done by a registered professional ensure to ensure stability and constructed in accordance with the approved design. The group was asked to review the proposed change and get back to DMLR with any recommendations/comments.

### **Butch Lambert, DMLR, Ian Dye, OSM, Les Vincent, DMLR – conclusion**

Bond Releases - Butch advised the group that when working on a bond release, to get with the inspector before the release is submitted, to work through any issues.

Butch gave the group his appreciation for attending the meeting and for their working relationship with DMLR. He thanked Jon Rockett and Brian Evans for attending. Mr. Evans was asked for comments but had none, for the group.

Butch asked Ian Dye to update the group on the changes to OSM and Ian informed the group of the change of the Big Stone Gap OSM to an area office and that command would be divided between himself, Harris Morris, and Doug Stone.

Butch advised that Tim Derringer from the Knoxville office is now the Field Office Director for Virginia.

Butch informed the group that 99.7 to 99.8% of applications are now electronic and made a formal announcement that effective January 1, 2007, all applications will be electronic.

Ian added that OSM is very interested in EP and that DMLR has their continued support.

Les added that any items not on the agenda could be added at the meeting, or to contact him if you wanted items placed on the agenda before the next meeting.

*There being no further discussion the meeting was adjourned.*